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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of)
)
Rulemaking to Amend Parts 1, 2, 21 and 25)
of the Commission's Rules to Redesignate)
the 27.5-29.5 GHz Frequency Band, to) CC Docket No. 92-297
Establish Rules and Policies for Local)
Multipoint Distribution Service and for)
Fixed Satellite Services)
)
and)
)
Suite 12 Group Petition for Pioneer's)
Preference)

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COMMENTS OF BELL ATLANTIC

Bell Atlantic Corporation¹ generally supports the Commission's tentative conclusions in its Third Notice of Proposed Rulemaking and Supplemental Tentative Decision ("Third Notice") and submits the following comments on the issues identified by the Commission.

1. THE COMMISSION SHOULD ALLOCATE 1000 MHz OF SPECTRUM FOR LMDS AND AUCTION THE ENTIRE ALLOCATION TO THE HIGHEST BIDDER.

In the Third Notice, the Commission has tentatively concluded that 1000 MHz of spectrum should be allocated for Local Multipoint Distribution Service (LMDS). This conclusion reflects a reasoned compromise among the various interests vying for spectrum

¹ Bell Atlantic currently has a partnership interest in CellularVision of New York, L.P., and is operating that wireless cable system under contract.

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in the 28 GHz band. It also reflects the minimum amount of spectrum necessary for LMDS to compete with wireline cable television systems and other multichannel video programming distributors.

CellularVision is currently operating in Brighton Beach, New York, with an analog system offering 49 channels of programming. This channel offering is comparable to the number of channels being offered by competing wireline cable television systems in the area. These systems, however, already have plans to upgrade their systems to offer more channels. For example, one of the wireline competitors within CellularVision's New York PMSA -- Time Warner -- is now offering 150 channels in a test market in Queens.² Another competitor, DIRECTV, Inc., currently offers approximately 175 channels of programming nationwide through Direct Broadcast Satellite (DBS) service.³ Moreover, the Satellite Broadcasting and Communications Association of America claims that C-Band technology "offers superb picture quality, more than 100 scrambled channels, approximately 150 channels 'in-the-clear,' and 75 audio services."⁴

In order to be viable competitors, LMDS operators will need to offer more channels of programming than CellularVision does today. They will be able to offer approximately 190 channels by using digital technology, but only if they have at least 1000

² See K. Johnson, Acorns Sprout Among the Oaks of the Telecommunications Field, NEW YORK TIMES, at A-1 (July 5, 1994)

³ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 95-61, Comments of DIRECTV, Inc. at 1 (filed June 30, 1995).

⁴ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 95-61, Comments of The Satellite Broadcasting and Communications Association of America at 13 (filed June 30, 1995).

MHz of spectrum available and all of that spectrum is used for video programming. If LMDS operators offer voice, data and interactive services over their systems, they would have to reduce significantly the number of channels of video programming they offer. The allocation of 1000 MHz of spectrum is therefore the minimum necessary for LMDS systems to be viable competitors.

Since a full 1000 MHz of spectrum is necessary to provide a competitive number of channels, the Commission should auction this spectrum as a single block to the highest bidder.⁵ Auctioning this spectrum in smaller blocks would be inefficient because the winning bidders would need to aggregate their spectrum in order to have a commercially viable system. If the Commission decides to auction this spectrum in smaller blocks, it should permit winning bidders to aggregate spectrum within BTAs.

In the future, LMDS operators may need more spectrum to compete with wireline systems that continue to expand their channel capacity. The Commission should leave the door open for LMDS to obtain more spectrum through co-frequency sharing with Fixed Satellite Services. Although the FCC tentatively concluded that the existing record does not establish the feasibility of such sharing,⁶ Bell Atlantic continues to believe that co-frequency sharing is feasible and that the Commission should permit interested parties to develop the record further on this issue or negotiate co-frequency sharing arrangements.

⁵ Bell Atlantic supports the Commission's proposal to permit disaggregation of spectrum by LMDS licensees. Third Notice, ¶ 80. This disaggregation should occur through negotiated arrangements that are filed with the Commission.

⁶ Third Notice, ¶ 43.

2. THE COMMISSION SHOULD AWARD LICENSES WITHIN BASIC TRADING AREAS (BTAs) AND IMPLEMENT A STREAMLINED PROCESS FOR BUILDING SYSTEMS WITHIN BTAs.

Bell Atlantic supports the Commission's conclusion that BTAs are the best geographic areas for licensing LMDS.⁷ These areas do approximate the likely scope of the service areas for LMDS services. BTAs are also the areas the Commission plans to use for licensing MMDS spectrum, another technology currently used for wireless cable services.

Bell Atlantic recommends that the Commission adopt a streamlined process for construction and modification of LMDS facilities. The FCC should allow LMDS licensees to construct transmitters anywhere within the boundaries of their BTA, subject to interference protection standards, without having to seek prior approval for each transmitter at each site. By licensing LMDS service on a geographic basis with clearly defined boundaries, there is no need for a costly and time-consuming application and review process. Instead, LMDS licensees can be given the flexibility to configure their systems to meet the needs and interests of their subscribers in a timely and efficient manner.

Under Bell Atlantic's proposal, each LMDS licensee could set up transmitter sites anywhere within the BTA without seeking prior approval for each of these sites, as long as the licensee had coordinated with adjacent BTA licensees regarding interference at service

⁷ Third Notice, ¶ 87. Bell Atlantic supports the Commission's tentative conclusion that LMDS licensees should be permitted to partition their geographic service areas. Third Notice, ¶ 90. This partitioning should occur through negotiated arrangements that are filed with the Commission.

boundaries.⁸ In place of individual long-form applications for each transmitter, the Commission should rely on a post-installation certification procedure, similar to the MMDS low-power signal booster rules (47 C.F.R. § 21.913(g)), which would provide a certain time period for other LMDS licensees to claim interference. In order to ensure all adjacent operators receive notice, the Commission could require that such certifications would be served on all LMDS licensees in adjacent BTAs. Claims that the transmitting signal is causing interference in an adjacent BTA can be resolved under procedures for interference abatement.⁹

3. THE COMMISSION SHOULD NOT IMPOSE ANY ELIGIBILITY OR CROSS OWNERSHIP RESTRICTIONS ON LMDS

Bell Atlantic supports the Commission's conclusion that there should be no restrictions on the ownership of LMDS licenses. The Commission has correctly determined that "there are no statutory or regulatory restrictions that prohibit a local exchange carrier from holding an interest in a wireless cable operator or LMDS licensee" because wireless cable systems do not meet the statutory definition of "cable system."¹⁰ In

⁸ This is fully consistent with the Commission's proposal "to require applicants coordinate frequencies among themselves at their service areas boundaries." Third Notice, ¶ 120.

⁹ See, e.g., new section 47 C.F.R. § 21.939, as adopted in Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, Report and Order at App. C (rel. June 30, 1995).

¹⁰ Third Notice, ¶ 100.

addition, the telco-cable cross-ownership ban has been found unconstitutional and its enforcement enjoined.¹¹

There is also no policy reason for the Commission to impose restrictions on the ownership of LMDS licenses. As the Commission correctly noted, the multichannel video programming distribution market includes competitors using a wide variety of technologies, such as traditional cable television systems, Direct Broadcast Satellite systems, Multipoint Multichannel Distribution Systems (MMDS), and satellite master antenna television systems.¹² It is inconceivable that any single entity could gain control of all these technologies and monopolize the multichannel video programming distribution market.

On the other hand, imposing restrictions on the ownership of LMDS licenses might stifle competition. They would likely prevent competitors from utilizing an efficient mix of technologies to distribute multichannel video programming. They would also stifle investment by the very entities that are best equipped to become viable competitors through the use of this technology. There is therefore no reason for the Commission to impose ownership restrictions on LMDS licenses

¹¹ See, e.g., The Chesapeake and Potomac Tel. Co. of Va. v. United States, 830 F. Supp. 909 (E.D. Va.), aff'd, 42 F.3d 181 (4th Cir. 1994), cert. granted, 115 S. Ct. 2608 (1995).

¹² Third Notice, ¶ 77.

4. THE COMMISSION SHOULD REGULATE LMDS SERVICES ON A NON-COMMON CARRIER BASIS UNLESS THE LICENSEE ELECTS COMMON CARRIER STATUS FOR SPECIFIC SERVICES

Bell Atlantic expects that the predominant use of LMDS systems, at least in the near term, will be for distribution of multichannel video programming on a non-common carrier basis. Bell Atlantic therefore recommends that the Commission presumptively regulate LMDS systems on a non-common carrier basis and allow LMDS licensees to elect common carrier status for specific services. In the alternative, the Commission should allow LMDS licensees to elect non-common carrier or common carrier status at the time a service offering is initially made available.

5. THE COMMISSION SHOULD PREEMPT STATE REGULATION OF LMDS SERVICES TO THE MAXIMUM EXTENT OF ITS AUTHORITY.

Bell Atlantic supports the FCC's tentative proposal to preempt state entry and rate regulation of private carriage video distribution service.¹³ Bell Atlantic also recommends that the FCC use its full authority to preempt state regulation of LMDS services. There is a strong federal interest in promoting competition to monopoly cable television systems. The Commission has therefore "sought in a variety of proceedings to promote the growth of competition in the marketplace for the delivery of video programming."¹⁴ To further this federal interest, the Commission has a long-standing goal "to facilitate the

¹³ Third Notice, ¶ 110-112.

¹⁴ Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 95-61, Notice of Inquiry, at 4 (rel. May 24, 1995).

development and rapid deployment of wireless cable services.”¹⁵ There are therefore ample grounds for the Commission to preempt state regulation of LMDS services.

One area where preemption can facilitate LMDS service is local regulation of transmitting and receiving antennas. As the Commission has already recognized with respect to satellite antennas, “local zoning restrictions have inhibited access to satellite services for a substantial number of users, widely dispersed throughout the country.”¹⁶ These local zoning regulations pose the same threat to the federal interest in delivering video programming through LMDS technology. In fact, Bell Atlantic and several other parties have already argued that the Commission should expand its preemption of local zoning regulations for satellite antennas to cover other types of antennas.¹⁷

6. THE COMMISSION SHOULD ADOPT MODERATE BUILD OUT REQUIREMENTS FOR LMDS SERVICES

Bell Atlantic supports the Commission’s proposal to require LMDS licensees to make service available to a minimum of one-third of the population of their geographic

¹⁵ Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, MM Docket No. 94-131, Report and Order, at ¶ 1 (rel. June 30, 1995).

¹⁶ Preemption of Local Zoning Regulation of Satellite Earth Stations, IB Docket No. 95-59, DA 91-577, 45-DSS-MISC-93, Notice of Proposed Rulemaking, at ¶ 43 (rel. May 15, 1995).

¹⁷ See, e.g., IB Docket No. 95-59, Comments of Bell Atlantic, The Wireless Cable Association International, Inc., Maximum Service Television, and ACS Enterprises, Inc., and Reply Comments of MCI.

areas within five years from license grant and two-thirds within ten years.¹⁸ As the Commission correctly noted, more aggressive build out requirements could place LMDS licensees at the mercy of a few manufacturers and discourage technological development by other potential suppliers of LMDS equipment. Moreover, the industry is developing digital equipment and a more aggressive build out requirement could force uneconomic investments in analog equipment just as it approaches obsolescence.

7. THE COMMISSION SHOULD GRANT CELLULARVISION A PIONEER'S PREFERENCE

Bell Atlantic supports the Commission's proposal to grant CellularVision a pioneer's preference for the New York BTA, subject to CellularVision making an 85 percent payment for the portion of the BTA which does not include the New York PMSA. CellularVision is unquestionably the innovator of LMDS technology and qualifies for a pioneer preference under the applicable Commission rules. It is providing service to a significant number of subscribers in Brighton Beach, New York, and has more than 30 applications pending to expand its service.

Bell Atlantic also supports the Commission's proposal to grandfather CellularVision's current use of the contiguous 1 GHz of spectrum for 36 months, or until the first GSO satellite is placed into service, whichever occurs later. Such a provision is

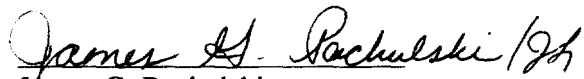
¹⁸ Third Notice, ¶ 117. If the Commission decides to allow partitioning of BTA service areas, it should also allow the parties to the partitioning agreement to negotiate their respective share of the build out requirements for the entire BTA. These partitioning agreements should then be filed with the Commission.

necessary for CellularVision to migrate its system to the new spectrum allocation without disrupting its customers.

Respectfully submitted,

The Bell Atlantic Telephone Companies

By their Attorney

A handwritten signature in cursive script, reading "James G. Pachulski /gh".

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